

1 Amy B. Vandeveld, SBN 137904
LAW OFFICES OF AMY B. VANDEVELD
2 1850 Fifth Avenue, Suite 22
San Diego, California 92101
3 Telephone: (619) 231-8883
Facsimile: (619) 231-8329
4 Attorney for Plaintiff

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8 IN THE UNITED STATES DISTRICT COURT
9 SOUTHERN DISTRICT OF CALIFORNIA

10 KAREL SPIKES,

11 Plaintiff,

12 TEPI NORTE MEX CITY; FRANCISCO
13 CHAVEZ; CHRISTINA CHAVEZ; ROBERTO
BARNET dba OLD COTIJAS and DOES 1
14 THROUGH 10, Inclusive,

15 Defendants.

Case No.: 08 CV 0454 H
(LSP)

REQUEST FOR ENTRY OF
CLERK'S DEFAULT AGAINST
DEFENDANT ROBERTO
BARNET dba OLD COTIJAS

16 Plaintiff, KAREL SPIKES, respectfully requests that the
17 Clerk of the United States District Court, Southern District,
18 enter default against defendant ROBERTO BARNET dba OLD COTIJAS .

19 SPIKES filed the instant Complaint on March 18, 2008. Mr.
20 Manuse, Agent for ROBERTO BARNET dba OLD COTIJAS, was personally
21 served with the Complaint and Summons on May 30, 2008. The Proof
22 of Service and Summons was filed with this Court on June 10, 2008
23 (A copy of the Summons and Declaration of Service filed with this
24 Court is attached to the accompanying Declaration of Amy B.
25 Vandeveld as Exhibit "A".)

26 Pursuant to F.R.Civ.P. Rule 12, ROBERTO BARNET dba OLD
27 COTIJAS was required to respond to the Complaint within 20 days
28 of said service. ROBERTO BARNET dba OLD COTIJAS failed to file a

1 response within the 20 day period and, in fact, has never filed a
2 response to the instant Complaint.

3 Plaintiff was subjected to discrimination in the instant
4 action because of an inaccessible path of travel, inaccessible
5 seating and lack of accessible parking space, as well as lack of
6 signage for such space. Plaintiff seeks \$4,000.00 per offense, as
7 well as damages for emotional distress and other injuries, as
8 authorized by California Civil Code Section 52. Plaintiff also
9 seeks recovery of his attorneys' fees and costs, as provided by
10 California Civil Code Sections 51, et seq., and 54 et seq., and
11 by Title III of the Americans with Disabilities Act, 42 USC Sec.
12 12188.

13 Respectfully submitted:

14 DATED 7/1, 2008

LAW OFFICES OF AMY B. VANDEVELD

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18 AMY B. VANDEVELD,
19 Attorney for Plaintiff
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1 Amy B. Vandeveld, State Bar No. 137904
2 LAW OFFICES OF AMY B. VANDEVELD
3 1850 Fifth Avenue, Suite 22
4 San Diego, California 92101
5 Telephone: (619) 231-8883
6 Facsimile: (619) 231-8329

7 Attorney for Plaintiff

8
9 IN THE UNITED STATES DISTRICT COURT
10 SOUTHERN DISTRICT OF CALIFORNIA

11 KAREL SPIKES,

12 Plaintiff,

13 vs.

14 TEPI NORTE MEX CITY; FRANCISCO
15 CHAVEZ; CHRISTINA CHAVEZ; ROBERTO
16 BARNET dba OLD COTIJAS and DOES 1
THROUGH 10, Inclusive,

17 Defendants.

Case No.: 08 CV 00454 H
(LSP)

DECLARATION OF AMY B.
VANDEVELD IN SUPPORT OF
REQUEST FOR ENTRY OF
CLERK'S DEFAULT
JUDGMENT AGAINST
DEFENDANT ROBERTO
BARNET dba OLD COTIJAS

18 I, AMY B. VANDEVELD, declare:

19 1. I am the attorney for Plaintiff, and am licensed and
20 admitted to practice before all the courts of California, including
21 the Southern District of United States District Court in California.

22 2. I have personal knowledge of the facts set forth in this
23 declaration and if called as a witness I could competently
24 testify to the following facts.

25 3. Attached hereto as Exhibit "A" is a true and correct copy of
26 the Summons and Return of Service of Defendant ROBERTO BARNET dba OLD
27 COTIJAS.

28 I declare under penalty of perjury under the laws of the State of

1 California and the United States of America that the foregoing is true
2 and correct.

3 Executed this 1st day of July, 2008, at San
4 Diego, California.

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6 AMY B. VANDEVELD
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Summons in a Civil Action (Rev 11/97)

United States District Court

SOUTHERN DISTRICT OF CALIFORNIA

FILED

2008 MAY 23 PM 4:35

CLERK, U.S. DISTRICT COURT,
SOUTHERN DISTRICT OF CALIFORNIA

KAREL SPIKES,

Plaintiff,

vs.

VS

TEPI-NORTE MEX-CITY;
FRANCISCO CHAVEZ; CHRISTINA
CHAVEZ; ROBERTO BARNET dba
OLD COTIJAS and DOES 1
THROUGH 10, Inclusive,

Defendants.

SUMMONS IN A CIVIL ACTION on First Amended Complaint WMT DEPUTY
Case No.

08 CV 0454 H (LSP)

TO: (Name and Address of Defendant)

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and
serve upon PLAINTIFF'S ATTORNEY

Amy B. Vandeveld, Esq.
LAW OFFICES OF AMY B. VANDEVELD
1850 Fifth Avenue
San Diego, CA 92101
(619) 231-8883

An answer to the complaint which is herewith served upon you, within 30 days after
service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment
by default will be taken against you for the relief demanded in the complaint.

W. Samuel Hamrick, Jr.

MAY 23 2008

CLERK

DATE

K. HAMMERLY

By

, Deputy Clerk

Summons in a Civil Action

Page 1 of 2

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AMY B. VANDEVELD, ESQ.
LAW OFFICES OF AMY B. VANDEVELD
SAN DIEGO CA 92101
619-231-8883
Attorney for: KAREL SPIKES

Ref. No. : 0297932-01
Atty. File No. : 08CV0454H(LSP)

UNITED STATES DISTRICT COURT, SO. DISTRICT OF CA
SOUTHERN JUDICIAL DISTRICT

PLAINTIFF : KAREL SPIKES
DEFENDANT : TEPI-NORTE MEX-CITY, et al.

Case No.: 08CV0454H(LSP)
PROOF OF SERVICE

1. At the time of service I was at least 18 years of age and not a party to this action.
2. I served copies of the SUMMONS IN A CIVIL ACTION; FIRST AMENDED CIVIL COMPLAINT; NOTICE AND ORDER FOR EARLY NEUTRAL EVALUATION CONFERENCE; ANSWER TO CIVIL COMPLAINT
3. a. Party served : ROBERTO BARNET dba OLD COTIJAS
b. Person served : MR. MANUSE, MANAGER/PERSON IN CHARGE
(HISP/F/65YRS/5'8"/160LBS/BRN EYE/BLK HR)
4. Address where the party was served 4988 IMPERIAL AVE.
SAN DIEGO, CA 92113 (Business)
5. I served the party
b. **by substituted service.** On May 30, 2008 at 01:00 PM I left the documents listed in item 2 with or in the presence of MR. MANUSE, MANAGER/PERSON IN CHARGE, HISP/F/65YRS/5'8"/160LBS/BRN EYE/BLK HR
(1) **(business)** a person at least 18 years of age apparently in charge at the office or usual place of business of the person to be served. I informed him or her of the general nature of the papers.
(4) a **declaration of mailing** is attached.
(5) I attach a **declaration of diligence** stating actions taken first to attempt personal service.
6. The "Notice to the person served" (on the summons) was completed as follows:
c. on behalf of: ROBERTO BARNET dba OLD COTIJAS
under [xx] CCP 416.90 (authorized person)
7. **Person who served papers**
a. RODRIGO LORA
b. KNOX ATTORNEY SERVICE, INC.
2250 Fourth Avenue
San Diego, California 92101
c. 619-233-9700
d. Fee for service: \$53.75
e. I am:
(3) a registered California process server
(i) an independent contractor
(ii) Registration No.: 479
(iii) County: San Diego

8. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 6, 2008

Signature: _____

RODRIGO LORA



PROOF OF SERVICE

AMY B. VANDEVELD, ESQ.
LAW OFFICES OF AMY B. VANDEVELD
1850 5TH AVE.
SAN DIEGO CA 92101
619-231-8883
Attorney for : KAREL SPIKES

Ref. No. : 0297932-01
Atty. File No. : 08CV0454H(LSP)

UNITED STATES DISTRICT COURT, SO. DISTRICT OF CA
SOUTHERN JUDICIAL DISTRICT

PLAINTIFF : KAREL SPIKES
DEFENDANT : TEPI-NORTE MEX-CITY, et al.

Case No.: 08CV0454H(LSP)
**DECLARATION REGARDING
DILIGENCE**

I received the within process on 05/28/08. After due and diligent effort I have been unable to effect personal service on the within named party at the following address(es):

Party served : ROBERTO BARNET dba OLD COTIJAS
Business : 4988 IMPERIAL AVE., SAN DIEGO CA 92113

Attempts to effect service are as follows:

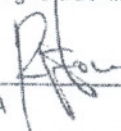
05/28/08 04:10P Attempted service at business; subject not in
05/29/08 07:52A Attempted service at business; subject not in
05/30/08 01:00P Attempted service-effected substitute service

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: June 6, 2008

Signature: _____

RODRIGO LORA



Jud. Coun. form, rule 2.150 CRC

DECLARATION RE DILIGENCE

LAW OFFICES OF AMY B. VANDEVELD
1850 5TH AVE.
SAN DIEGO CA 92101
619-231-8883

Ref. No. : 0297932-01
Atty. File No. : 08CV0454H(LSP)

UNITED STATES DISTRICT COURT, SO. DISTRICT OF CA
SOUTHERN JUDICIAL DISTRICT

PLAINTIFF : KAREL SPIKES
DEFENDANT : TEPI-NORTE MEX-CITY; et. al.

Case No.: 08CV0454H(LSP)
DECLARATION OF MAILING

RE: ROBERTO BARNET dba OLD COTIJAS

I am a citizen of the United States and am employed in the County of SAN DIEGO, State of California. I am over 18 years of age and not a party to this action. My business address is
2250 FOURTH AVENUE, SAN DIEGO CA 92101

On June 5, 2008 I served the within documents:

SUMMONS IN A CIVIL ACTION; FIRST AMENDED CIVIL COMPLAINT; NOTICE
AND ORDER FOR EARLY NEUTRAL EVALUATION CONFERENCE; ANSWER TO CIVIL
COMPLAINT

On the party in said action, by mailing a true copy thereof (by first-class mail, postage prepaid), enclosed in a sealed envelope at the mail collection site at my place of employment, addressed to the following:

ROBERTO BARNET dba OLD COTIJAS

4988 IMPERIAL AVENUE
SAN DIEGO, CA 92113

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on June 5, 2008 at SAN DIEGO, California.

Signature: _____


LAURA BONDE

DECLARATION OF MAILING

PROOF OF SERVICE

I, the undersigned, declare that: I am authorized to serve the following document(s) in the within action pursuant to F.R.Civ.P. 4(c) and that the documents were served on today's date as follows:

1. Case Name/USDC Number:
Spikes v. Tepi Norte Mex-City. et. al.
USDC No.: 08 cv 0454 H (LSP)
2. Document(s) served:
Request for Entry of Clerk's Default Against Defendant ROBERTO BARNET dba OLD COTIJAS; Declaration of Amy B. Vandeveld in Support of Request for Entry of Clerk's Default Against Defendant ROBERTO BARNET dba OLD COTIJAS
3. Person(s) served/Place of service:
Pamela E. Havird, Esq.
LAW OFFICES OF PAMELA E. HAVIRD
P.O. Box 370342
San Diego, CA 92137
Facsimile: (858) 408-3323
email: pehavird@scbglobal.net
Counsel for Defendants FRANCISCO CHAVEZ and CHRISTINA CHAVEZ

ROBERTO BARNET dba OLD COTIJAS
4988 Imperial Avenue
San Diego, CA 92113
Defendant
4. Manner of Service:

_____ (a) Personal Service: By handing copies of the document(s) to the person served [F.R.Civ.P. 5(b)(2)(A)].

✓ _____ (b) Service by Mail: I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid, at San Diego, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after date of deposit for mailing in the affidavit. [F.R.Civ.P. 5(b)(2)(B); Cal. Code of Civil Procedure, Sections 1013a, 2015]

_____ (c) Facsimile Transmission: From Fax No. (619) 231-8329 to the facsimile number(s) listed on this proof of service. The facsimile machine I used complied with Rule 2003(3), and no error was reported by the machine. [[F.R.Civ.P. 5(b)(2)(D)].

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct.

Executed On: 7/1/08

By:

Laurie Miller
LAURIE MILLER